

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.133 OF 2005

Vijaykumar s/o Chandmal Munot,
age: 34 years, Occ: Business,
R/o Gavkhel, Tq. Ashti,
District Beed.

Appellant

Versus

01 The Maharashtra State Road
Transport Corporation, Bombay,
(The Divisional Controller,
Divisional Workshop, Kothal Road,
Ahmednagar.)

02 Laxman s/o Tatyaba Kute,
age: major, Occ: Driver,
R/o Gangadevi, Tq. Ashti,
District Beed.

Respondents

Mr.D.R.Jayabhar, advocate for the appellant

CORAM : M.S.SONAK, J.

DATE : 19th January, 2018.

ORAL JUDGMENT :

1 Heard Mr.Jayabhar, learned Counsel for the appellant.
Respondents are neither present nor represented, through served.

2 This is an appeal of the year 2005. No further
indulgence, therefore, needs to be granted.

3 Mr.Jayabhar, learned Counsel for the appellant
submits that the Tribunal has completely ignored evidence of
Witness No.3 – Shaikh Yusuf Chand, the Police Station Officer. In

his evidence, this witness has deposed in respect of filing of First Information Report against the driver of the S.T. bus for rash and negligent driving. It is also stated that the rear side of the S.T. bus was dashed against bumper of the motorcycle and after dash the motor cycle slipped up to 25 feet. This witness has also deposed about brushing to the tin of the S.T. bus.

4 Mr.Jayabhar states that since, there is evidence to the effect that the claimant spent Rs.52,000/- on treatment and sustained permanent disability, compensation of Rs.1,50,000/-, as claimed, was required to be awarded.

5 In order to appreciate Mr.Jayabhar's contention, depositions of witnesses as well as impugned award were perused. The claimant examined himself, the pillion rider, Police Constable and the doctor. The driver of the S.T. bus examined himself. The claimant deposed about the accident which took place on 28.07.1990 when the claimant was going to Chinchodi from Nagar on motorcycle bearing Registration No.MXI-9550. It is the case of the claimant that he was dashed by the S.T. bus and sustained injuries leading to the claim.

6 The factum of accident is not disputed, though it was claimed by the driver of the S.T. bus that the claimant slipped over stones on the road and thereafter was thrown to a distance of 10 feet. The Motor Accident Claims Tribunal has believed deposition of the S.T. bus driver, but chosen to disbelieve the deposition of claimant and the pillion rider. As pointed out by advocate Mr.Jayabhar, the MACT has not given credence, whatsoever, to the

deposition of Police Constable. The Motor Accident Claims Tribunal, in paragraph 9 of the impugned award, has observed that if indeed there had been impact between both the vehicles, obviously, some damage must have been caused to the S.T. bus. In the absence of any damage to the S.T. bus, it cannot be said that there was impact between the two vehicles. Therefore, version of the bus driver is more probable. In recording such finding, however, the Motor Accident Claims Tribunal has completely ignored deposition of Police Constable Shaikh Yusuf Chand. This witness has deposed that in the inquiry, it is revealed that it was the bus driver who drove the bus in rash and negligent manner and, therefore, F.I.R. came to be registered against him. This witness has stated that he noticed brushing to the tin of the S.T. bus. Apart from this, he also deposed that the bumper and side guards of the motor cycle were bent and motorcycle had slipped on the road. The MACT has completely ignored this evidence to suggest that there was an impact between the two vehicles. In this case, the claimant and pillion rider have also deposed to that extent. Their evidence has not been demolished in the course of cross examination. No doubt, the S.T. bus driver has also deposed specifically about the claimant sliding on the rough surface of the road. If this is the situation, evidence of police Constable, who, precisely, is a third party, assumes great relevance. Since, the F.I.R. was lodged against driver of the S.T. bus and when this witness (Sk.Yusuf Chand) deposed about noticing brushing to the tin of S.T. bus, the finding, that there was no impact, cannot be sustained. However, condition of the road and its width has been deposed to by all the witnesses. Since, the S.T. bus is heavy vehicle, the responsibility is cast on the driver of the S.T. bus. In

such situation, applying the test of preponderance of probabilities, it cannot be said that the claimant has failed to establish rash and negligent driving of the S.T. bus driver. Insofar as evidence as regards medical expenses is concerned, the claimant has produced certain bills, which, according to him, amounted to Rs.52,000/-. The doctor examined on behalf of the claimant has also deposed to the injuries suffered by the claimant. Although, the entire claim cannot be accepted, this is a fit case where compensation can be cumulatively assessed at Rs.50,000/- i.e. towards medical expenses, loss of income and other inconvenience suffered by the claimant on account of the accident. In the facts and circumstances of this case, this will be a reasonable amount since, there is no direct evidence on the disability. This is a case where claimant suffered fracture and it is possible that he was required to undergo two operations. However, we have noticed that the accident in question was taken place on 27.08.1990 and construed from the context of that time, an amount of Rs.50,000/- would be a just and proper compensation.

7 The appeal is, therefore, partly allowed. Respondents are jointly and severally directed to pay appellant compensation of Rs.50,000/- (Rs.Fifty Thousand). This shall carry interest @ 6% from the date of award dated 30.11.2000 till actual realisation.

8 Appeal is disposed of in above terms. There shall be no order as to costs.

M.S.SONAK
JUDGE